Supreme Court, U.S.

98 890 NOV 23 1998

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Docket No.

UNITED STATES SUPREME COURT
OCTOBER 1998 TERM

SAMMIE BARMAN DELAUNE, Estate; DENISE LOVELESS, Co-Executors and Transferees of the Estate of Sammie Barman Delaune; MAE ACY AMEDEE, Co-Executors and Transferees of the Estate of Sammie Barman Delaune; WILLIAM R. SMITH, JR., Transferees of the Estate of Sammie Barman Delaune; PHYLLIS ROBIRA ZAPP, Transferees of the Estate of Sammie Barman Delaune; BERTHA THOMAS, Transferees of the Estate of Sammie Barman Delaune; JANE LEE VAN REENEN, Transferees of the Estate of Sammie Barman Delaune; JOYCE B. METCALF, Transferees of the Estate of Sammie Barman Delaune; PEGGY ANN GEILER, Transferees of the Estate of Sammie Barman Delaune; SAMUEL BUCKMASTER, JR., Transferees of the Estate of Sammie Barman Delaune

Petitioners,

v.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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VI. District Court Findings of Fact and Conclusions of Law

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ESTATE OF SAMMIE BARMAN DELAUNE, ET AL

CIVIL ACTION

VERSUS

NO. 94-416-A

UNITED STATES OF AMERICA

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came for bench trial on November 4, 1996. After carefully considering the evidence and the briefs filed by the parties, the court now renders its findings of fact and conclusions of law in accordance with Fed. Rule Civ. P. 52(a).

Findings of Fact

A. In the pretrial order, the parties entered into the following stipulations of fact:

1. Sammie Barman Delaune was married to Jack Delaune and they had no children. The couple lived in Ascension Parish, Louisiana.

2. Jack died on May 31, 1986. His will left his entire estate, less $3000 in special bequests, to his wife, Sammie.

[*2] 3. On January 14, 1987, Sammie met with the

attorneys representing the executor of Jack's succession and discussed changing her will and renouncing Jack's succession.

4. Sammie died on January 26, 1987.

5. Sammie's will left her entire estate, except $3,000 in special bequests, to Jack. Because Jack predeceased Sammie, that legacy lapsed and all but $6,000 of their combined net successions would pass to Sammie's heirs under Louisiana's laws of intestacy.

6. William P. Delaune, an heir of Jack and executor of his succession, filed a state action in the Twenty-third Judicial District Court on February 6, 1987, alleging that Sammie's act instructing the attorneys to draft the renunciation documents created a legally enforceable obligation in favor of Jack's heirs. He contended this obligation was enforceable against Sammie's succession for Jack's entire bequest to her. A Rule to Show Cause hearing was held and a judgment was signed on February 27, 1987 declaring that Sammie had renounced a portion of the bequest from Jack equal to two-sevenths of their combined net estates. This judgment was signed within nine months of Jack's death.

7. Sammie's co-executors did not accept any income or other benefit from Jack's succession in the period between Sammie's death and February 27, 1987.

[*3] 8. Sammie's succession filed a United States Estate Tax Return on October 26, 1987, and filed an Amended United States Estate Tax Return on May 16, 1988, correcting an unrelated error and claiming a refund of $11,453.63.

9. On audit, the Service accepted the $11,453.63 refund shown on the amended return, but made a deficiency assessment after rejecting the alleged disclaimer and the legal claim of Jack's relatives. The Service calculated that Sammie's succession owed $146,727.53 in estate taxes and interest, after reducing the assessed deficiency by the $11,453.63 due the estate.

10. Sammie's succession and its transferees paid the assessed deficiency of $146,727.53 to the Service on November 28, 1990.

11. On November 20,1992, plaintiffs filed a Claim for Refund and Request for Abatement with the Service. This claim sought a refund for the $11,543.63 approved on audit, the $146,727.53 additional taxes and interest paid, interest on the overpayments from the date paid until the date refunded, the tax savings from the additional deduction for the costs of prosecuting the Claim for Refund, and any other sums due plaintiffs.

12. In a letter dated July 23, 1993, the Service denied the Claim for Refund.

B. After considering the evidence, the court additionally renders the following findings of fact:

13. Although Sammie Delaune died in a hospital, she and her husband both resided in a nursing home during a period before their respective deaths.

[*4] 14. Bill Delaune was Jack Delaune's brother and before Jack's death, he paid the expenses of both Jack and Sammie.

15. Subsequent to Jack's death, Bill was named

executor of his succession.

16. Subsequent to Jack's death, Bill Delaune issued checks drawn on a joint account in the names of Jack and Bill Delaune for the payment of Sammie Delaune's expenses while in the nursing home. The funds in the account were all community property and Jack's undivided interest in the account was a part of his succession. This was the same account Bill had been using prior to Jack's death to pay living expenses of Jack and Sammie.

Conclusions of Law

1. This court has subject matter jurisdiction pursuant to 28 U.S.C. §1331.

2. The burden of proof in litigation of tax matters lies with the taxpayer, and the taxpayer has the burden of going forward with the evidence as well as the ultimate burden of persuasion. See **Helvering v. Taylor**, 293 U.S. 507, 515 (1935); **Portillo v. Commissioner**, 932 F.2d 1128, 1133 (5th Cir. 1991).

3. Plaintiffs first contend that they are entitled to the refund because there was a valid disclaimer of Sammie Delaune's interest in the property of her husband's succession. A qualified disclaimer under 26 U.S.C. § 2518 (b) must be a written irrevocable and unqualified refusal to accept an interest in property which is received by the transferor within nine months of the date of the transfer, where the person disclaiming the interest has not accepted the interest in the property, or any of its [*5] benefits, and where the interest in the property passes to someone else without any direction from the person making the

disclaimer.

4. Because no writing existed demonstrating Sammie Delaune's refusal to accept an interest in her husband's succession and because Louisiana law does not provide a method for a deceased individual to renounce an inheritance, Sammie Delaune's oral representations to her attorneys did not effect a valid disclaimer.

5. Plaintiffs claim that Sammie Delaune's succession representatives had the capacity to renounce Jack Delaune's succession on her behalf and that the succession representative's attorneys had the authority to execute such a renunciation on behalf of their clients. To determine whether Sammie Delaune's succession representatives had the capacity to disclaim, the court must look to state law to find a valid renunciation. The requirement that a renunciation be valid under state law is implicit in the language of 26 U.S.C. 2518 (b)(4) which requires that as a result of the refusal, the interest passes without any direction on the part of the person making the disclaimer to either the spouse of the decedent, or to a person other than the person making the disclaimer. State law would dictate whether this requisite element of a qualified disclaimer is satisfied in all cases.

6. Louisiana Civil Code article 1007 provides: "Not only the person who is entitled to an inheritance may accept it, but if he dies before having expressly or tacitly accepted or rejected it, his heir shall have a right *to accept it* under him" (emphasis added). A logical extension of this language which expressly authorizes [*6] an heir to accept an inheritance on behalf of a deceased person is

that Louisiana law does not provide the same authority for an heir's ability to renounce the same on a decedent's behalf.

7. The court finds that neither the executors nor the attorneys representing the heirs had the authority under Louisiana law to disclaim an interest in property on behalf of the heir, Sammie Delaune, after her death. The agreement submitted to the state district court by the succession representatives and heirs of Sammie Delaune did not create a valid judicial renunciation. Only Sammie Delaune had the right under Louisiana law to renounce.

8. Moreover, no qualified disclaimer existed under 26 U.S.C. § 2518 because Sammie Delaune accepted benefits from the allegedly disclaimed property prior to the attempted disclaimer of the property. "Acceptance [of benefits] is manifested by an affirmative act which is consistent with ownership of the interest in property." See Treas. Reg. § 25.2518-2(d). Plaintiffs essentially argue that all of Sammie's expenses paid from account number 15-3814-4, a joint account in Jack and William Delaune's names, were "paid from income generated by her undivided one-half interest in former community property."[1] According to plaintiffs, because Sammie Delaune "never used more than her portion of the funds" she did not accept any of Jack's succession or any income it generated.

[*7] 9. Because the funds in the account were all community property, both Jack Delaune's succession and

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1. Plaintiffs' pre-trial brief p. 12.

Sammie owned an undivided one-half interest. Upon payment by Bill Delaune of Sammie Delaune's expenses, an undivided amount of those payments consisted of the property of Jack Delaune's succession; Sammie Delaune, therefore, received benefits from the allegedly disclaimed property. The acceptance of income and payment of expenses were not segregated or allocated between Sammie Delaune and the succession of her husband during the period at issue.

10. Plaintiffs claim that an additional reason for entitlement to a refund is because Jack Delaune's heirs held a valid enforceable claim against the Estate of Sammie Delaune that would be deductible under 26 U.S.C. §2053. 26 U.S.C. §2053(c) states that when claims against an estate are founded on a promise or agreement, the agreement must be contracted bona fide and for adequate and full consideration in money or money's worth. There are three basic requirements for a claim to be deductible under this provision: (1) the claim against the estate must be allowable by the laws of the jurisdiction where the estate is being administered; (2) the claim must be a personal obligation of the decedent; (3) and the claim must be in existence at the time of the decedent's death. Additionally, where the claim is based on a promise or agreement, the liability must be contracted *bona fide* and for adequate consideration in money or money's worth. Deductions are matters of legislative grace, and the burden is on the taxpayer to demonstrate that any [*8] deduction is within the statutory provisions authorizing the claimed deduction. Interstate Transit

Lines v. Commissioner, 319 U.S. 590 (1943).

11. Sammie Delaune's alleged oral agreement with Jack Delaune that upon the death of the survivor of them, their property would be divided among their heirs did not create a natural obligation deductible from the estate under 26 U.S.C. §2053.

12. The plaintiffs failed to show that Sammie's instruction to the attorneys to draft documents so that she could renounce Jack's succession created a contract for the performance of what might have been a natural obligation, such that Jack's heirs had a claim against Sammie or her succession.

Accordingly, judgment will be entered in favor of defendant and this action will be dismissed.

Baton Rouge, Louisiana, March 7, 1997.

s/John V. Parker

JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA